

BILL ANALYSIS

Senate Research Center

H.B. 3169
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3169 makes several changes to the bullion depository that was created last session.

The bill:

1. Creates statutory authority to promote, market, and advertise the bullion depository. Includes authority to license intellectual property for branding and sale of promotional goods.
2. Removes requirement to confirm administrator with advice and consent of the governor, lieutenant governor, and senate under Section 2116.003, Government Code.
3. Makes depository security and account holder information confidential and exempt from disclosure under Public Information Act.
4. Adds the Office of the Attorney General representation of bullion depository for claims on depository accounts under Section 2116.023, Government Code.
5. Allows bullion depository to establish other charges and receive payments in the course of depository operations and activities, to be deposited to the general revenue fund under Section 2116.010, Government Code. Allows the Texas comptroller of public accounts (comptroller) flexibility in setting fees by eliminating rulemaking requirement.
6. Clarifies there is no state or comptroller liability related to the bullion depository.
7. Removes waiver of sovereign immunity for suit under Section 2116.009, Government Code.
8. Clarifies that depository agents perform services on behalf of current and prospective account holders.
9. Specifies comptroller's authority to enter into transactions and relationships with intermediaries, and with bank and non-bank custodians holding individual retirement account related bullion deposits under Section 2116.021, Government Code.
10. Includes authority to appropriate fee and payment revenue for implementation, administration, promotion, marketing, and operation of the depository.

The House Committee Substitute made a few other changes:

1. Provide property tax exemption for bullion held in Texas bullion depository (TBD).
2. Provide exemption for claims by creditors, with certain carve outs for state debt and overdue child support payments.
3. Allow comptroller to contract for design, manufacture, marketing and distribution of official commemorative items, including coins or other items containing precious metal, to promote the TBD.

4. Prohibit commingling of account holder funds or deposits by a third party who is acting on behalf of a depository account holder or holding deposits or funds of an account holder.
5. Require comptroller preapproval of all third party advertising, marketing, written materials and signage related to the TBD used for commercial purposes.
6. Revise depository agent licensing structure to clarify who may act as a depository agent and their security requirements. Add a new permissible investments requirement. Create certain depository agent licensing exemptions.
7. Allows depository agents to appoint a depository delegate to conduct bullion depository agent services, with related depository agent and depository delegate requirements.
8. Require the banking commission, in consultation with the comptroller, to adopt processes and procedures for depository agent interactions with account holders.

H.B. 3169 amends current law relating to the operation and administration of the Texas Bullion Depository, to depository agents, to the appropriation of money from the fees, charges, penalties, and other amounts related to the depository and deposited to the general revenue fund for that purpose, and to the provision of a related ad valorem tax exemption.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas comptroller of public accounts (comptroller) in SECTION 2 (Section 2116.002, Government Code) of this bill.

Rulemaking authority previously granted to the comptroller is rescinded in SECTION 5 (Section 2116.005, Government Code), SECTION 6 (Section 2116.006, Government Code), SECTION 11 (Section 2116.010, Government Code), SECTION 16 (Section 2116.024, Government Code), SECTION 17 (Section 2116.025, Government Code), and SECTION 20 (Section 2116.052, Government Code) of this bill.

Rulemaking authority is expressly granted to the Banking Commissioner of Texas or a person designated by the banking commissioner and acting under the banking commissioner's direction and authority in SECTION 24 (Section 151.855, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 2116.001(4), (9), and (10), Government Code, to redefine "deposit," "depository agent," and "precious metal."

SECTION 2. Amends Section 2116.002, Government Code, by amending Subsection (a) and adding Subsections (c) through (i), as follows:

(a) Provides that the Texas Bullion Depository (depository) is established as a program in the office of the Texas comptroller of public accounts (comptroller), rather than established as an agency of this state in the office of the comptroller to provide a bullion depository and services for the public benefit.

(c) Authorizes the depository to establish and operate one or more branch locations of the depository. Provides that branch locations of the depository are considered to be part of the depository.

(d) Authorizes the depository to enter into contracts, as the comptroller determines to be prudent and suitable, to facilitate the operations of the depository and further the purposes of this chapter.

(e) Prohibits this state and the comptroller from being held liable for the depository or related activities of the depository. Prohibits this chapter from being construed as creating financial or other responsibilities for the depository to the state or to the comptroller. Provides that this state does not pledge the full faith and credit of this state for the benefit of the depository.

(f) Authorizes the depository, notwithstanding Chapter 2113 (Use of Appropriated Money), to enter into contracts and engage in marketing, the sale of promotional items, advertising, and other activities to promote, market, and advertise the depository. Authorizes the comptroller to use appropriated funds to pay for activities of the depository authorized under this section.

(g) Authorizes the depository, notwithstanding any other provision of law, to enter into contracts for the design, manufacture, marketing, and distribution of official commemorative items, including coins or other items containing precious metal, to promote, market, and advertise the depository. Requires that the depository establish the purchase price for any commemorative items. Authorizes the comptroller to use appropriated funds to pay for depository activities authorized by this subsection.

(h) Requires that the depository deposit any funds received from the sale of commemorative items described by Subsection (g) to the credit of the general revenue fund. Authorizes money deposited to the general revenue fund under this subsection to be appropriated to the comptroller to offset the costs of the implementation, administration, promotion, marketing, advertising, and operation of the depository.

(i) Authorizes the comptroller to adopt rules necessary to implement this chapter.

SECTION 3. Amends Section 2116.003, Government Code, as follows:

Sec. 2116.003. DEPOSITORY ADMINISTRATION; ADMINISTRATOR. (a) Provides that the depository is administered as a program, rather than as a division, of the office of the comptroller and under the direction and supervision of a bullion depository administrator appointed by the comptroller, rather than appointed by the comptroller with the advice and consent of the governor, lieutenant governor, and senate.

(b) Requires the administrator to administer, supervise, and direct the operations and affairs of the depository and liaise with depository agents.

(c) Authorizes the administrator to employ staff as necessary and appropriate to the efficient administration of the depository.

SECTION 4. Amends Sections 2116.004(a) and (b), Government Code, to change references to bullion or specie to precious metal.

SECTION 5. Amends Section 2116.005, Government Code, by amending Subsections (a), (c), and (d) and adding Subsections (a-1) and (f), as follows:

(a) Makes a conforming change.

(a-1) Requires the comptroller to develop standards and processes for the shipping, handling, and deposit of precious metals to the depository to ensure the integrity of and verify any precious metals shipped to the depository for deposit.

(c) Requires the comptroller to develop, rather than requires the comptroller by rule to adopt, certain standards.

(d) Authorizes the comptroller, rather than authorizes the comptroller by rule, if the comptroller determines that to do so is in the public interest, restrict the forms in which deposits of precious metals may be made to those forms that conveniently lend

themselves to measurement and accounting in units of troy ounces and standardized fractions of troy ounces.

(f) Prohibits a depository agent or other person who is acting on behalf of an account holder or who is holding the deposits or funds of an account holder from commingling any deposits or funds belonging to the depository agent or other person with the deposits or funds of the account holder.

SECTION 6. Amends Section 2116.006(b), Government Code, as follows:

(b) Requires the depository to make a delivery described by Subsection (a) on demand by the presentment of a written demand or digital electronic instruction, rather than suitable check, draft, or digital electronic instruction, to the depository or a depository agent. Requires the comptroller to develop, rather than requires the comptroller by rule to adopt, the forms, standards, and processes through which an order for delivery on demand may be made, presented, and honored.

SECTION 7. Amends Section 2116.007, Government Code, as follows:

Sec. 2116.007. TRANSFER OF DEPOSITORY ACCOUNT BALANCE. (a) Requires the comptroller to develop forms, standards and processes by which a depository account holder may transfer any portion of the balance of the holder's depository account by certain methods, rather than authorizes a depository account holder, in accordance with rules adopted under this chapter, to transfer any portion of the balance of the holder's depository account by certain methods. Makes a conforming change.

(b) Requires that the depository adjust the depository account balances of the depository accounts to reflect a transfer transaction between depository account holders on presentment of the written demand or digital electronic, rather than the check, draft, or other, instruction by reducing the payor's depository account balance and increasing the depository account balance of the payee accordingly.

(c) Authorizes, rather than requires, the depository, if certain conditions are met, to allow the payee to establish a depository account by presentment of the payor's written demand or digital electronic instruction to the depository or to a depository agent. Makes a conforming change.

SECTION 8. Amends Section 2116.008(b), Government Code, to authorize the execution of a contract for a depository account described by this section to be made, rather than to be made, as prescribed by rules adopted under this chapter, by electronic or digital transmission.

SECTION 9. Amends the heading to Section 2116.009, Government Code, to read as follows:

Sec. 2116.009. ACCOUNT BALANCES.

SECTION 10. Amends Section 2116.009, Government Code, by amending Subsection (b) and adding Subsections (b-1), (b-2), and (b-3), as follows:

(b) Requires the depository to furnish depository account holders with an account statement or passbook, whether in physical, digital, or electronic form. Deletes existing text providing that the depository's act of furnishing an account statement or passbook, whether in physical, digital, or electronic form constitutes a denial of liability and the giving of such notice as to any amount not shown on the statement or passbook.

(b-1) Provides that the depository account holder is responsible for promptly examining each account statement received from the depository and giving notice of any discrepancy in the account statement to the depository within the time frame established by the comptroller.

(b-2) Provides that, if a depository account holder does not report an account balance discrepancy reflected on the account holder's account statement or passbook in the appropriate time period described by Subsection (b-1), the account holder is considered to have accepted as accurate the account statement or passbook and the depository account statement or passbook is considered to be accurate.

(b-3) Defines "account statement."

SECTION 11. Amends Section 2116.010, Government Code, as follows:

Sec. 2116.010. New heading: FEES; SERVICE CHARGES; PAYMENTS; PENALTIES.

(a) Creates this subsection from existing text. Authorizes the comptroller, rather than authorizes the comptroller by rule, to establish certain fees, services charges, and penalties.

(b) Authorizes the comptroller to establish other fees and charges and receive payments in the course of depository operations and activities authorized by this chapter, including from transactions and relationships authorized by Section 2116.021 (Transactions and Relationships).

(c) Requires the comptroller to deposit revenue realized by the depository under this section to the credit of the general revenue fund.

(d) Authorizes money credited to the general revenue fund under this section to be appropriated to the comptroller to offset the costs of implementation, administration, promotion, marketing, advertising, and operation of the depository.

SECTION 12. Amends Section 2116.013, Government Code, to prohibit the depository from paying certain fees or interest on a depository account or on any funds held on behalf of a depository account holder.

SECTION 13. Amends Subchapter A, Chapter 2116, Government Code, by adding Section 2116.0145, as follows:

Sec. 2116.0145. EXEMPTION FROM CREDITORS' CLAIMS. (a) Provides that deposits of bullion or specie held in the depository in accordance with this chapter are exempt from claims of creditors, including claims of creditors of a depository account holder or a successor in interest of a depository account holder.

(b) Provides that, except as provided by Subsection (c), the rights of a depository account holder in regard to any deposits of bullion or specie held in the depository are exempt from attachment, levy, garnishment, execution, and seizure for the satisfaction of any debt, judgment, or claim against a depository account holder or successor in interest of a depository account holder.

(c) Provides that this section does not apply to the claim of a creditor of a depository account holder or a successor in interest of a depository account holder for a debt, judgment, lien, or claim, including a tax delinquency, asserted by or owed to the state or certain people.

(d) Authorizes the depository to take any necessary and appropriate action to effectuate the transfer of a depository account, or all or part of a depository account balance, to a creditor with a claim described by Subsection (c).

(e) Provides that this section does not permit a debtor to exempt bullion or specie held in a depository account from property of the estate in a bankruptcy proceeding.

SECTION 14. Amend Section 2116.021, Government Code, to authorize, rather than require, the depository to enter into transactions and relationships with bullion banks, depositories, dealers, central banks, banks approved by the Internal Revenue Service or nonbanks acting as custodians for individual retirement accounts, sovereign wealth funds, financial institutions, precious metals exchanges, international nongovernmental organizations, intermediaries, and other persons, located inside or outside of this state or inside or outside of the United States, as the comptroller determines to be prudent and suitable to facilitate the operations of the depository and to further the purposes of this chapter.

SECTION 15. Amends Section 2116.023, Government Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires that the depository, on receipt of notice of any transaction described by Subsection (a), with respect to all or any portion of the balance of a depository account, and on direction of the Texas attorney general (attorney general), suspend withdrawal privileges associated with the balances of the depository account until suitable substitute arrangements may be effected in accordance with the representation of the depository by the attorney general and rules of the comptroller to enable the registered account holder to take delivery of the precious metals represented by the account balances in question. Requires that the depository recognize the transfer to the full extent authorized by this chapter, the representation of the depository by the attorney general, and rules adopted under this chapter.

(d) Requires that the depository, on receipt of notice of any transaction described by Subsection (a), refer the notice to the attorney general for representation, and requires the attorney general to represent the depository in any matter described by Subsection (a).

SECTION 16. Amends Section 2116.024, Government Code, to require the comptroller, rather than require the comptroller by rule, to establish certain references.

SECTION 17. Amends Section 2116.025, Government Code, to require the comptroller, rather than require the comptroller by rule, to establish certain procedures and requirements for the depository and depository agents.

SECTION 18. Amends Subchapter A, Chapter 2116, Government Code, by adding Sections 2116.027, 2116.028, and 2116.029, as follows:

Sec. 2116.027. **CONFIDENTIALITY OF RECORDS.** (a) Provides that, except as otherwise provided by Section 2116.028 and this section, the depository's records are subject to public inspection to the extent authorized by Chapter 552 (Public Information).

(b) Provides that certain information is confidential and is exempt from disclosure under Chapter 552.

(c) Authorizes depository account information, notwithstanding Subsection (b)(2), to be disclosed to certain individuals and entities and under certain conditions.

Sec. 2116.028. **INTELLECTUAL PROPERTY.** (a) Authorizes the depository to take certain actions.

(b) Provides that intellectual property of the depository is excepted from required disclosure under Chapter 552 beginning on a certain date and ending on a certain date.

(c) Requires the comptroller to deposit to the credit of the general revenue fund revenue realized by the depository under this section.

(d) Authorizes money credited to the general revenue fund under this section to be appropriated to the comptroller to offset the costs of implementation,

administration, promotion, marketing, advertising, and operation of the depository.

(e) Authorizes the comptroller to establish intellectual property policies.

Sec. 2116.029. ADVERTISING, SIGNAGE, AND DISCLOSURES BY THIRD PARTIES. (a) Defines "third party."

(b) Prohibits third party advertising, marketing, promotional or written material, or signage created or used for commercial purposes related to the depository, in written form or in any other form, from being used until the comptroller has approved its use.

(c) Authorizes the comptroller to require that a third party who creates advertising, marketing, promotional or written material, or signage created or used for commercial purposes related to the depository include certain approved disclosures or identifying marks, as the commissioner determines to be appropriate, in the entity's advertising, marketing, promotional or written material, or signage.

SECTION 19. Amends Section 2116.051, Government Code, to authorize the current and prospective depository account holders to use private, independently managed firms and institutions licensed as depository agents to conduct transactions in bullion and specie on behalf of current and prospective depository account holders, rather than requires the depository to use private, independently managed firms and institutions licensed as depository agents as intermediaries to conduct retail transactions in bullion and specie on behalf of the depository with current and prospective depository account holders.

SECTION 20. Amends Section 2116.052, Government Code, to require a depository agent, rather than require the comptroller by rule to require a depository agent, to maintain suitable systems and processes for electronic information sharing and communication with the comptroller and the depository to ensure that all transactions effected on behalf of current and prospective depository account holders are reported to and integrated into the depository's records not later than 11:59:59 p.m. on the date of each transaction. Makes nonsubstantive changes.

SECTION 21. Amends Section 151.002(b)(9-c), Finance Code, to redefine "depository agent services."

SECTION 22. Amends Subchapter J, Chapter 151, Finance Code, by adding Section 151.8521, as follows:

Sec. 151.8521. LICENSE CATEGORIES; EXEMPTIONS FROM LICENSING. (a) Requires the Banking Commissioner of Texas or a person designated by the banking commissioner and acting under the banking commissioner's direction and authority (commissioner), in consultation with and subject to approval by the comptroller, to create defined categories of licenses for depository agents, with specific application requirements for each different category of license. Authorizes the licensing categories created under this subsection to be differentiated on the basis of the type and value of authorized precious metal transactions for a depository agent in each category.

(b) Authorizes requirements for each category of depository agent license created under Subsection (a) to differ based on certain factors.

(c) Requires the commissioner, in adopting application requirements for the depository agent license categories created by the commissioner under Subsection (a), to ensure that the requirements, including any licensing fees, enable qualified individuals and firms to apply for a license and provide for the safety and security of depository account holders and the depository.

(d) Requires the commissioner, in consultation with and subject to the approval of the comptroller, to determine whether any person, transaction, or class of persons is exempt from depository agent licensing under Section 151.003(10).

SECTION 23. Amends Section 151.853(a), Finance Code, to prohibit a person from engaging in the business of rendering depository agent services or advertising, soliciting, or holding itself out as a person that engages in the business of depository agent services unless the person is licensed under this subchapter or is excluded from licensing requirements under Section 151.003, or as otherwise determined under Section 151.8521(d), rather than is licensed under this subchapter and has received the requisite certifications from the comptroller of its facilities, systems, processes, and procedures as required by Chapter 2116, Government Code, or rules adopted under that chapter or is excluded from licensing requirements under Section 151.003.

SECTION 24. Amends Section 151.855, Finance Code, as follows:

Sec. 151.855. APPLICATION AND ACCOMPANYING FEE, STATEMENTS, AND SECURITY. (a) Requires an applicant for a depository agent license to submit an application in accordance with Section 151.203 and applicable requirements adopted under Section 151.8521.

(b) Requires an applicant, at the time an application for a depository agent license is submitted, to file with the Texas Department of Banking any fee, information, documentation, or security required as provided by Section 151.8521 for the category of license for which the person is applying, which may include certain information.

(c) Authorizes the commissioner to adopt rules to implement Subsection (b)(4).

SECTION 25. Amends Section 151.858, Finance Code, to provide that a depository agent license holder is liable for the delivery to or for the depository account of each depositor, rather than the account of the depository or each depositor, as applicable, of all bullion, specie, and money payable or deliverable in connection with the transactions in which the license holder engages on behalf of the depositor, rather than depository.

SECTION 26. Amends the heading to Section 151.860, Finance Code, to read as follows:

Sec. 151.860. DISCLOSURE AND OTHER REQUIREMENTS.

SECTION 27. Amends Section 151.860, Finance Code, by adding Subsections (c), (d), and (e), as follows:

(c) Requires a depository agent license holder to comply with the requirements of Section 2116.029, Government Code.

(d) Requires the commissioner, in consultation with the comptroller, to adopt processes and procedures for interactions between a depository agent license holder and a depository account holder to ensure compliance with this chapter, Chapter 2116 (Texas Bullion Depository), Government Code, and other applicable regulatory requirements.

(e) Prohibits a depository agent license holder or other person who is acting on behalf of an account holder from commingling deposits or funds belonging to the depository agent or other person with the deposits or funds of a depository account holder.

SECTION 28. Amends Subchapter B, Chapter 11, Tax Code, by adding Section 11.141, as follows:

Sec. 11.141. PRECIOUS METAL HELD IN TEXAS BULLION DEPOSITORY. (a) Defines "precious metal."

(b) Provides that a person is entitled to an exemption from taxation of the precious metal that the person owns and that is held in the Texas Bullion Depository established under Chapter 2116, Government Code, regardless of whether the precious metal is held or used by the person for the production of income.

(c) Prohibits the governing body of a taxing unit, notwithstanding Section 11.14(c), from providing for the taxation of precious metal exempted from taxation under Subsection (b).

SECTION 29. Amends Section 11.42(b), Tax Code, to provide that an exemption authorized by Section 11.11 or 11.141 is effective immediately on qualification for the exemption.

SECTION 30. Amends Section 11.43(a), Tax Code, to include Section 11.141 to sections that authorize an exemption and make a nonsubstantive change.

SECTION 31. Repealers: Sections 2116.009(a) (relating to a cause of action for denial of deposit liability on a depository account contract without a maturity date), (c) (relating to waiving a depository's sovereign immunity), (d) (relating to a depository's limited liability), (e) (relating to requirements of an authorized suit being brought in a district court of Travis County), and (f) (relating to an authorized suit being brought before a certain date), Government Code.

SECTION 32. (a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2017.

(b) Provides that Section 11.141, Tax Code, as added by this Act, and Sections 11.42(b) and 11.43(a), Tax Code, as amended by this Act, take effect January 1, 2018, but only if the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, authorizing the legislature to exempt from ad valorem taxation precious metal held in the Texas Bullion Depository is approved by the voters. Provides that, if that amendment is not approved by the voters, those sections have no effect.